IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WA.No. 2294 of 2006()

AGAINST THE JUDGEMENT/ORDER IN WPC.26008/2006
Dated 14/11/2006

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APPELLANT: PETITIONERS
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1. R.SUKUMARAN NAIR,
   III GRADE OVERSEER, K.I.P.(0&M),
   SECTION 2/1, ADOOR.

2. BABU K.GEORGE, III GRADE OVERSEER,
   K.I.P.(O&M), SECTION 4/1, ADOOR.

3. R.SUBHADRA, III GRADE OVERSEER,
   K.I.P.(O&M), SECTION 2/1, ADOOR.

BY ADV. SRI.K.R.B. KAIMAL
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN

RESPONDENTS: PETITIONER
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1. STATE OF KERALA,
   REP. BY SECRETARY,
   LOCAL SELF GOVERNMENT DEPARTMENT,
   THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER,
   IRRIGATION AND ADMINISTRATION,
   THIRUVANANTHAPURAM.

3. THE DIRECTOR OF PANCHAYATHS,
   THIRUVANANTHAPURAM.

4. THE ASSISTANT EXECUTIVE ENGINEER,

K.I.P.(O&M), SUB DIVISION NO.1,
ADOOR.

5. THE EXECUTIVE ENGINEER,
K.I.P.(R&B) DIVISION, KOTTARAKARA.

6. JOSE V., III GRADE OVERSEAR,
K.I.P.(O&M), SECTION 4/1, ADOOR.

BY ADV. SRI. SANDESH RAJA, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

W.A. NO. 2294 OF 2006

Dated this the 6th day of December 2006

JUDGMENT

Abdul Gafoor, J

An interim order passed by the learned Single Judge is under challenge in this Writ Petition. The appellants are Overseers Grade-III working in the Irrigation Department. Consequent on enforcement of Panchayat Raj System, deployment of persons employed in Irrigation Department to Local Self Government became necessary. Accordingly, the appellants were deployed to Local Self Government Department in other districts than where they were serving in the Irrigation Department. This resulted in a Writ Petition claiming that they were liable to be posted in the districts of their choice. It was disposed of by Ext.P1 judgment directing the appellants to file representations before the 1st respondent - Government. The petitioners were allowed to make representations pointing out their place of choice in Local Self Government Department. It was

also made clear that if a copy of that judgment was produced before government within three weeks, they would be continued in the place where they were working until the Govt. decides the matter. Instead of making representation to the 1st respondent - Government, they have submitted representations, Ext.P2 series, to the 2nd respondent - Chief Engineer. They did not produce copy of the judgment, as directed. Inspite of that they were continued in the same stations and no orders regarding posting to the Local Self Government Department were issued. Far later they were relieved.

2. Then they made a representation Ext.P7 dated 08.08.2006 requesting the Government either to give them postings to stations opted by them or exempt them from deployment and transfer. The Government examined this matter. This resulted in Ext.P8 order rejecting the representation and directing disciplinary action against the appellants for not getting relieved in time. Consequently Ext.P9 order was issued by the 2nd respondent to withhold the salary of the petitioners from May, 2006 onwards. Challenging Exts.P8 and P9, they approached this court with the Writ Petition, in which, the learned

Single Judge passed an interim order refusing stay on Ext.P8 and P9. Therefore this appeal.

3. Ext.P8 directs posting of the appellant to the Local Self Government Department. Going by Ext.P1, as they have not filed representations before the Government, there was no stay of their posting to Local Self Government Department. Necessarily they are liable to be posted to Local Self Government Department so the order was rightly not stayed by the learned single Judge.

4. As at present, it is not clear what are the charges and allegations made against the incumbents. Without that, one cannot examine whether the disciplinary action is justified or not or consider whether the disciplinary action contemplated is to be stayed or not. Therefore, the learned single Judge was right in that regard as well.

The further aspect contained in Ext.P8 is withholding of salary. However, Ext.P8 is under challenge and the writ petitioners are working. As at present, there is no question of withholding of salary. Necessarily, there shall be a limited stay of Ext. P9 so far as the withholding of salary is concerned. With

that modification in the impugned interim order this writ appeal is closed. It is further made clear that the observation contained in the impugned order of the learned single Judge regarding the alleged fraud committed alone shall not be the basis for the disciplinary action. The Writ Appeal is closed accordingly.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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